



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

DECISION

FCP/149485

PRELIMINARY RECITALS

Pursuant to a petition filed May 20, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by iCare in regard to Medical Assistance, a hearing was held on September 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's supportive home care/personal care worker hours have been correctly determined.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Atty. Elizabeth Bartlett
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is a paraplegic as a result of being shot in July 2012. The injury is to T4, 5 and 6. Petitioner is 27 years of age.

3. As of March 2013 Petitioner was living with his sister. By May 2013 he was living alone in his own apartment. Petitioner does attend a rehab program three days per week. He has little trunk strength or control.
4. Petitioner has been receiving 6 hours per day of supportive home care (SHC) and personal care worker (PCW) services.
5. An evaluation using personal care screening tool methodology was conducted in March 2013 and iCare approved 18 hours per week of SHC/PCW (that approval also indicated that it is for 3 hours per day which is 21 hours per week; the discrepancy is irrelevant as the approval was changed when Petitioner moved).
6. As Petitioner was living independently as of May 2013 a new screening was conducted and 22 hours per week of SHC/PCW services were approved for Petitioner. The approval was for the following times:

SHC

Vacuuming	1 x 10 minutes=	10 min/wk.
Tub cleaning	1 x 10 min =	10 min/wk.
Toilet cleaning	3 x 5min =	15 min/wk.
Mop BR floor	1 x 10 min =	10 min/wk.
Change sheets	3 x wk. @ 10 min =	30 min/wk.
Clean stove	1 x wk. @ 10 min =	10 min/wk.
Mop kit. floor	1 x wk. @ 10 min =	10 min/wk.
Clean frig	1 x 5 min @ 1x wk. =	5 min/wk.
Dishes	3 x wk. @ 10 min =	30 min/wk.
Empty garbage	3 x wk. @ 5 min =	15 min/wk.
Laundry	1 x 60 min =	60 min/wk.
Prep dinner	7 x wk. @ 30 min =	210 min/wk.

Subtotal: 415 min\wk. or 6.91hrs. week

PCW

Dressing	14 x wk. @ 15 min =	210 min/wk.
Bowel program	7 x wk. @ 60 min =	420 min/wk.
Mobility Assist	14 x wk. @ 10 min =	140 min/wk.

Subtotal: 770min/wk. or 12.83 hrs./wk.

Other

Supervise/tub transfer	7 x wk. @ 15 min =	105 min/wk.
Pharmacy trip	2 x mth @ 30 min =	30 min/mth

Subtotal: 450min/mth/7.5 hrs.(rnded)/1.87 hr./wk. (rded)

TOTAL: 21.53 hours rounded to 22 hours per week

[My arithmetic here might differ slightly from that of the agency due to rounding but the end result is still 22 hours.]

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the Petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1).

Supportive home care and personal care services are included in the list of covered services in the statutory note above. *Wis. Admin. Code §DHS 10.41(2)*.

At this point, I also note the following with respect to the Personal Case Screening Tool (PCST):

...
The PCST is designed by the Department to be a *guideline* and “tool” to achieve consistency statewide in the submission of prior authorization requests for the coverage of PCW service claims. It is not, however, a substitute for the professional review process exercised by the Department’s Nursing Consultant in the approval, denial or modification of Prior Authorization Requests. ...

...
Division of Hearings and Appeals Decision # MCW-69/86374; at page 3, para. 4; issued 10/7/2007.

Further,

...
For over four years, the Division has relied on what is referred to as the Personal Care Screening Tool (PCST) as is evidenced by a large number of cases that have been held. For example, in Case #MPA-53/93419, I wrote the following:

The Division relies heavily upon the Personal Care Screening Tool, which is a computer program it believes will allow it to consistently determine the number of hours a recipient requires. The screening tool allots a specific amount of time in each area the recipient requires help. The Division’s reviewer can then adjust these figures to account for variables missing from the screening tools calculations.

The past cases upheld the use of the PCST because government agencies have a duty to use the most accurate means available to determine the amount of help those they serve require. This requires them to constantly reevaluate and modify the formulas and tools used to determine the proper level of help. There is no evidence that the screening tool is invalid. This does not mean that the Division of Hearings and Appeals must blindly accept the results that tool yields, but it also means that the Division cannot toss those results out merely because they are different than past results.

... The tool was created to increase statewide uniformity when the number of PCW hours was calculated. Of course the Division, as well as DHA, may change the results of a PCST based on the documentation presented along with a PA request and/or at a hearing.

...
Division of Hearings and Appeals Decision # MPA/131746; at page 2-3; issued 7/12/2011.

Though I respect the PCST guidelines and, especially, the effort to achieve uniformity so as to use resources efficiently and treat people with consistency there are cases that, based on the facts of the case, become outliers to the uniform standard. Based on the credible testimony of Petitioner I find this to be such a case.

Petitioner submitted a letter response that included a very intimate window into his daily routines along with a detailed list of personal care/supportive home tasks for the week of August 5 through August 12, 2013. (Exhibit C) That detailed list shows that hours of care for that week ranged between 6.75 hours and 10.5 hours per day with an average of 7.89 hours per week.

In brief, Petitioner maintains that he needs well above the three hours per day determined by the agency. He testified that he needs a substantial breakfast to give him the strength and endurance necessary to engage in various activities of daily living and especially to perform his physical therapy rehab. He needs some assistance with shaving, bathing and catheter care. Catheter leakage necessitates extra laundry. He would like help with grocery shopping as his family members do try to help but are not always available. Further, he notes the two trips per month to the pharmacy are not sufficient as his medication schedule doesn't permit that all of his medications be picked up in the two allowed trips.

Agency staff visited Petitioner in March and May 2013 and contend that he is fairly independent. The agency also notes that Petitioner did not have a caregiver for some period of time from December 2012 until early March 2013 and that this demonstrates his independent abilities. I note that he was not living alone at that time; rather he was living with a sister.

I am adding to Petitioner's supportive home care and personal care worker hours. I found Petitioner very credible; his letter and the accompanying daily logs were, quite frankly, the best that I have seen from a Petitioner for this type of case. He was only 14 months from the shooting at the time of the hearing. As a practical matter it is apparent to me that he is still recovering and adapting to a new life. He moved from the home of his sister into an apartment alone -- this is not the action of a dependent personality or of someone not willing to work on more independence. I am, therefore, making the following changes to Petitioner's SHC/PCW service hours:

Bathing assistance at 7 day/15min/day (Pet receives 105 for tub transfers)	=	105 min/wk.
Grocery shopping - add'l 30 min/wk.	=	30 min/wk.
Grooming (nail care 1x/wk. and shaving 2x wk.)		35 min/wk.
Delete pharmacy trips @ 2x month and replace w/ 4 x month =		15 min/wk.
Breakfast and lunch – 10 min each at 7 days /wk.	=	140 min/wk.

Total = 325 min. wk. or 5.5 hrs. wk.

Adding this to what the agency has already approved, 22 hours (the deletion of the 2 pharmacy trips per month removes 7.5 minutes per week but this still leaves Petitioner's time at a rounded 22 hours per week), brings Petitioner's total to 27.5 hours. To this I am adding, as does the Department of Health Services in most PCW cases, 25% for the incidental tasks related to the approved activities, e.g., linen changes, light cleaning etc. See Element # 30 of the PCST Instructions. <http://www.dhs.wisconsin.gov/forms/FI/F11133A.pdf>. This brings Petitioner's total approved hours to 35 (27.5 x .25 = 7(rounded up) + 27.5 = 34.5 rounded up to 35). Petitioner would like 8 hours per day but I will note that I did not approve range of motion (an hour per day requested) as the PCST Instructions indicate that there be a detailed description of what assistance is required, e.g., moving all four extremities at once, and that is lacking here. Further, there is a certain amount of multitasking that is involved, e.g., after starting a washer or dryer for laundry a person can perform other cleaning chores.

CONCLUSIONS OF LAW

That a preponderance of the evidence demonstrates that Petitioner requires 35 hours per week of SHC/PCW assistance including hours already approved by iCare.

THEREFORE, it is

ORDERED

That the agency take the administrative steps necessary to adjust the Petitioner's Care Plan in accordance with this decision: specifically, the Petitioner's SHC/PCW hours should be revised to 35 hours/week of SHC/PCW services as described above. These steps must be accomplished within 10 days after the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

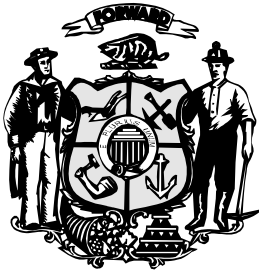
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of October, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 18, 2013.

iCare
Office of Family Care Expansion